

(6) The term *effective national market system plan* shall have the meaning provided in § 240.11Aa3-2(a)(2).

(7) The term *national market system security* shall have the meaning provided in § 240.11Aa2-1.

(8) The term *payment for order flow* shall have the meaning provided in § 240.10b-10(d)(9).

(9) The term *profit-sharing relationship* shall mean any ownership or other type of affiliation under which the broker or dealer, directly or indirectly, may share in any profits that may be derived from the execution of non-directed orders.

(10) The term *time of the transaction* shall have the meaning provided in § 240.10b-10(d)(3).

(b) *Quarterly report on order routing.* (1) Every broker or dealer shall make publicly available for each calendar quarter a report on its routing of non-directed orders in covered securities during that quarter. For covered securities other than option contracts, such report shall be divided into three separate sections for securities that are listed on the New York Stock Exchange, Inc., securities that are qualified for inclusion in the Nasdaq Stock Market, Inc., and securities that are listed on the American Stock Exchange LLC or any other national securities exchange. Such report also shall include a separate section for covered securities that are option contracts. Each of the four sections in a report shall include the following information:

(i) The percentage of total customer orders for the section that were non-directed orders, and the percentages of total non-directed orders for the section that were market orders, limit orders, and other orders;

(ii) The identity of the ten venues to which the largest number of total non-directed orders for the section were routed for execution and of any venue to which five percent or more of non-directed orders were routed for execution, the percentage of total non-directed orders for the section routed to the venue, and the percentages of total non-directed market orders, total non-directed limit orders, and total non-directed other orders for the section that were routed to the venue; and

(iii) A discussion of the material aspects of the broker's or dealer's relationship with each venue identified pursuant to paragraph (b)(1)(ii) of this section, including a description of any arrangement for payment for order flow and any profit-sharing relationship.

(2) A broker or dealer shall make the report required by paragraph (b)(1) of this section publicly available within one month after the end of the quarter addressed in the report.

(c) *Customer requests for information on order routing.* (1) Every broker or dealer shall, on request of a customer, disclose to its customer the identity of the venue to which the customer's orders were routed for execution in the six months prior to the request, whether the orders were directed orders or non-directed orders, and the time of the transactions, if any, that resulted from such orders.

(2) A broker or dealer shall notify customers in writing at least annually of the availability on request of the information specified in paragraph (c)(1) of this section.

(d) *Exemptions.* The Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this section, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

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§ 240.11Ac1-7 Trade-through disclosure rule.

(a) *Definitions.* For purposes of this section:

(1) The term *block trade* means a transaction in an option series that is for 500 or more contracts and has a premium value of at least \$150,000.

(2) The term *customer* means any person that is not a registered broker-dealer.

(3) The term *effective national market system plan* shall have the meaning provided in § 240.11Aa3-2.

(4) The term *listed option* means any option traded on a registered national

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securities exchange or automated facility of a national securities association.

(5) The term *options class* means all of the put option or call option series overlying a security, as defined in Section 3(a)(10) of the Act (15 U.S.C. 78c(a)(10)).

(6) The term *options series* means the contracts in an options class that have the same unit of trade, expiration date, and exercise price, and other terms or conditions.

(7) The term *receipt* means, with respect to an order sent to an away market displaying a superior price, the time at which the order is either represented in the trading crowd or received by the specialist.

(b) *Broker-dealer disclosure requirements.* (1) Any broker or dealer that effects a transaction in a listed option for the account of its customer must disclose in writing to such customer, at or before completion of such transaction, as defined in §240.15c1-1:

(i) When such transaction is effected at a price that trades through a better price published at the time of execution; and

(ii) That better published price.

(2) A broker-dealer shall not be required to provide the disclosure set forth in paragraph (b)(1) of this section if:

(i) It effects such transaction on a market that is a sponsor or participant in an effective national market system options linkage plan that includes provisions reasonably designed to limit the incidence of customer orders being executed at prices that trade through a better published price, including prices published other than by a linkage plan sponsor or participant, or

(ii) The customer order is executed as part of a block trade.

(3) A customer order is executed at a price that trades through a better published price if:

(i) The price at which an order to purchase a listed option is executed is higher than the lowest offer, at the time the order was executed, published pursuant to a national market system plan for reporting quotations in listed options; or

(ii) The price at which an order to sell a listed option is executed is lower than the highest bid, at the time the

order was executed, published pursuant to a national market system plan for reporting quotations in listed options.

(4) Notwithstanding paragraph (b)(3) of this section, a customer order is not considered to be executed at a price that trades through a better published price if:

(i) The market on which the order is executed has verified that the market publishing such better price is experiencing a failure, material delay, or malfunction of its systems;

(ii) The quotations disseminated pursuant to the national market system plan for reporting quotations indicates that it is experiencing delays in transmitting such quotations;

(iii) Such better published price was published by an exchange whose members are relieved of their obligations under paragraph (c)(2) of §240.11Ac1-1 because, pursuant to paragraphs (b)(3) or (d)(4) of §240.11Ac1-1, such exchange is not required to meet its obligations under paragraph (b)(1) of §240.11Ac1-1; or

(iv) The customer order is executed only after the market publishing the better price fails to respond to an order routed to it within 30 seconds of the order's receipt by that market.

(c) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any broker or dealer if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets, or the removal of impediments to and perfection of the mechanism of a national market system.

[65 FR 75462, Dec. 1, 2000]

SECURITIES EXEMPTED FROM REGISTRATION

§ 240.12a-4 Exemption of certain warrants from section 12(a).

(a) When used in this section, the following terms shall have the meaning indicated unless the context otherwise requires:

(1) The term *warrant* means any warrant or certificate evidencing a right to subscribe to or otherwise acquire another security, issued or unissued.